

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 31.03.2011
CORAM
THE HONOURABLE MR. JUSTICE VINOD K.SHARMA
C.P.No.199 of 2002

M/s.Haryana Supreme Marketing Company
Rep. by its Partner Mr.H.M.Arif,
No.2, E.K.Guru Street,
Chennai 600 003. ... Petitioner

Vs.

M/s.Euro India Shoes (Madras) Pvt. Ltd.,
Ismail Nagar, Ammour, Walajah Taluk,
N.A. District. ... Respondent

For petitioner : Mr.M.Arvind Subramaniam
For respondent : No appearance

O R D E R

This petitioner M/s.Haryana Supreme Marketing Company filed this petition for winding up of the respondent company M/s.Euro India Shoes (Madras) Pvt. Ltd., for its inability to pay the admitted liability.

2 The petitioner supplied materials to the respondent company as per the orders placed from time to time. The invoices depicting supply were signed by the respondent acknowledging the receipt of the goods. An amount of Rs.8,14,807/- (Rupees eight lakhs fourteen thousand eight hundred and seven only) is outstanding against the respondent company.

3 The petitioner claims that the amount was payable with interest @ 24% p.a. from due date till the date of actual payment. In discharge of the admitted liability of Rs.8,14,807.70 (Rupees eight lakhs fourteen thousand eight hundred and seven and paise seventy only). The respondent company issued four cheques, towards part payment which on presentation were dishonoured.

4 The petitioner issued statutory notice under the Companies Act. In spite of receipt of notice, no reply was received nor the respondent company made any payment. The petitioner submits that respondent company is unable to meet its admitted liability, therefore, it is ordered to be wound up.

5 The respondent company chose not to appear in the Court in spite of notice. Accordingly the company petition was ordered to be admitted. The petitioner was directed to publish a company petition in in one issue of Tamil daily "Dinaboomi" and one issue of English daily, "News Today" as also in Government gazette. The date of hearing was fixed on 5.3.2004.

6 The petitioner complied with the direction given by this Court and this Court, on 11.12.2006 ordered winding up of the respondent company, by passing the following order:

"The petitioner has complied with the formalities. In spite of the publication effected, there is no response from the respondents before this Court.

The Company petition is of the year 2002. Till this day, no progress has been shown from the

respondent rather he has appeared before this Court.

Therefore, winding up of the respondent company is hereby ordered directing the Official Liquidator to take charge of the assets of the company. The Ex-Directors are directed to file statement of affairs of the company within 21 days. The petitioner is directed to pay a sum of Rs.10,000/- to the Official Liquidator towards initial expenses. Consequently, connected C.A.No.1120 of 2002 is closed.□

7 The respondent thereafter filed C.A.No.1045 of 2007 for recalling the order of winding up, on the ground that the respondent company was willing to settle the matter, as the respondent was a running concern. The application was allowed and order dated 11.12.2006 was recalled.

8 The learned counsel for the petitioner, contends that the respondent did not honour the settlement, arrived at between the parties. The uncontroverted pleadings proved that the respondent company is unable to meet its admitted liability.

9 Rule 113 of the Companies (Court) Rule 1959, reads as under:

□R.113 Advertisement of the order □ Save as otherwise ordered by the Court, every order for the winding up of a company by the Court, shall within 14 days of the date of making the order, be advertised by the petitioner in one issue each of a newspaper in the English language and a newspaper in the regional language circulating in the State or the Union Territory concerned and shall be served by the petitioner upon such person, if any, and in such manner as the Judge may direct. The advertisement shall be in Form No.53.□

10 In exercise of power conferred under Rule 113 of the Companies (Court) Rules 1959, the advertisement for winding up of the respondent company is ordered to be dispensed with, as all formalities of winding up process already stood completed, and order of winding up was recalled on the application moved by the respondent company. However, the respondent company failed to honour the settlement.

11 The respondent company M/s.Euro India Shoes (Madras) Pvt. Ltd., Ismail Nagar, Ammour, Walajah Taluk, N.A. District is ordered to be wound up under the provisions of the Companies Act, 1956.

12 The Official Liquidator attached to this Court is appointed as Liquidator of the Company. He is directed to take charge of all the properties and effects of the respondent company forthwith. The Official Liquidator is further directed to serve copy of this order in a sealed cover on the respondent company by way of pre-paid registered post. The petitioner shall serve certified copy of this order of winding up on the Registrar of Companies, not later than one month of this date.

13 The cost of the company petition be recovered from the assets of the company.

31.03.2011

Index: Yes/No

Internet:Yes/No

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